

## REQUEST FOR COUNCIL ACTION

MEETING

DATE: 12/1/03

**AGENDA SECTION:**

CONSENT AGENDA

**ORIGINATING DEPT:**

Finance Department

**ITEM NO.**

D-10

**ITEM DESCRIPTION:** Resolution giving final approval of the issuance of approximately \$4.3 million in Multifamily Housing Revenue Bonds on behalf of Eastridge Associates, LLC.

**PREPARED BY:**  
Dale Martinson

Following a public hearing held on September 3<sup>rd</sup>, 2003, council gave preliminary approval of a request by Pacific Housing Corporation to issue multifamily housing revenue bonds on their behalf. The proceeds of the bonds are to be the acquisition and rehabilitation of the 126-unit Eastridge Estates apartment facility located at 2009 17<sup>th</sup> Street SE in Rochester. The property is an affordable housing development (with a Section 8 rental assistance contract in place). The property would continue to remain a low to moderate income housing property following acquisition.

Since the date of that preliminary approval, the Pacific Housing Corporation has been successful in obtaining the necessary bond allocation from the State of Minnesota. Additionally, financial advisors, underwriters and bond counsels have provided and reviewed ten separate (and rather lengthy) documents necessary for this issuance.

Our bond counsel (issuers counsel) has reviewed and amended all of these documents to protect the interest of the City and assure that these bonds will NOT be considered a legal liability of the City and that in no event shall the obligations ever be payable from or charged upon any funds of the City.

As of the date of this packet, there remains one item of disagreement over the wording of security guarantees. Hopefully this item will be resolved by the date of the counsel meeting. I am therefore requesting conditional approval pending final security language that satisfies the bond counsel acting on our behalf.

**RECOMMENDED COUNCIL ACTION:**

Conditional approval of the resolution giving final approval to the issuance of approximately \$4.3 million in Multifamily Housing Revenue Bonds on behalf of Eastridge Associates, LLC. , pending final amendments to documents to the satisfaction of issuer's bond counsel.

**COUNCIL ACTION:** Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_ to: \_\_\_\_\_

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Extract of Minutes of a Meeting of the  
Common Council of the City of Rochester, Minnesota

Pursuant to due call and notice thereof, a regular meeting of the Common Council of the City of Rochester, Minnesota, was duly held at the City Hall in said City on Monday, the 1st day of December, 2003, commencing at 7:00 o'clock P.M.

The following Council members were present:

and the following were absent:

Council member \_\_\_\_\_ then introduced and read the following  
written resolution and moved its adoption:

A RESOLUTION PROVIDING FOR THE ISSUANCE  
AND SALE OF MULTIFAMILY HOUSING REVENUE BONDS TO  
PROVIDE FUNDS FOR A MULTIFAMILY HOUSING PROJECT  
ON BEHALF OF EASTRIDGE ASSOCIATES, LLC

The motion for the adoption of the foregoing resolution was duly seconded by Council member \_\_\_\_\_, and upon vote being taken thereon the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

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RESOLUTION NO. \_\_\_\_\_

A RESOLUTION PROVIDING FOR THE ISSUANCE  
AND SALE OF MULTIFAMILY HOUSING REVENUE BONDS  
TO PROVIDE FUNDS FOR A MULTIFAMILY HOUSING PROJECT  
ON BEHALF OF EASTRIDGE ASSOCIATES, LLC

WHEREAS, on September 3, 2003, the Common Council of the City gave preliminary approval to the issuance of up to \$5,800,000 multifamily housing revenue bonds to a limited partnership to be formed by Affordable Housing Associates, LLC to finance the acquisition and rehabilitation of an existing 126 unit rental housing facility located in the City (the "Project"); and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Rochester, Minnesota (the "City"), as follows:

1. Authority. The City is, by the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Chapter 462C, as amended (the "Act"), authorized to issue and sell its revenue bonds for the purpose of financing the cost of housing developments and to enter into agreements necessary or convenient in the exercise of the powers granted by the Act.

2. Authorization of Project; Documents Presented. Eastridge Associates, LLC, a limited liability company organized under the laws of Delaware (the "Company"), has proposed to this Council that the City issue and sell its Variable Rate Multifamily Housing Revenue Bonds (Eastridge Estates Project), Series 2003A (the "Senior Bonds"), and its Subordinate Multifamily Housing Revenue Bonds (Eastridge Estates Project), Series 2003B (the "Subordinate Bonds") pursuant to the Act, and loan the proceeds thereof to the Company in order to provide financing with respect to costs of the acquisition and rehabilitation of the Project. Forms of the following documents relating to the Senior Bonds and Subordinate Bonds have been submitted to the City:

(a) a Financing Agreement dated as of December 1, 2003 (the "Senior Financing Agreement"), among the Issuer, the Borrower and Fifth Third Bank (Chicago), a state banking corporation (the "Trustee");

(b) a Multifamily Note dated as of December 1, 2003 (the "Note") from the Borrower to the Issuer, to be assigned by the Issuer;

(c) an Indenture of Trust dated as of December 1, 2003 (the "Senior Indenture") between the Issuer and the Trustee;

(d) an Assignment and Intercreditor Agreement dated as of December 1, 2003 (the "Assignment"), among the Issuer, the Trustee and Fannie Mae, a corporation organized and existing under the Federal Mortgage Association Charter Act ("Fannie Mae") and acknowledged by the Borrower;

(e) a Bond Purchase Agreement (the "Senior Bond Purchase Agreement") among the Issuer, RCB Dain Rauscher (the "Underwriter") and the Borrower;

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(f) an Official Statement (the "Senior Bonds Official Statement") pursuant to which the Underwriter will offer and sell the Senior Bonds;

(g) a Subordinate Financing Agreement dated as of December 1, 2003 (the "Subordinate Financing Agreement"), among the Issuer, the Borrower and Fifth Third Bank (Chicago), a state banking corporation (the "Trustee");

(h) a Subordinate Indenture of Trust dated as of December 1, 2003 (the "Subordinate Indenture") between the Issuer and the Trustee;

(i) a Bond Purchase Agreement (the "Subordinate Bond Purchase Agreement") among the Issuer, RCB Dain Rauscher (the "Underwriter") and the Borrower relating to the Subordinate Bonds; and

(j) an Official Statement (the "Subordinate Bonds Official Statement") pursuant to which the Underwriter will offer and sell the Subordinate Bonds.

3. Findings. It is hereby found, determined and declared that:

(a) There is no litigation pending or, to the actual knowledge of the City, threatened against the City questioning the City's execution or delivery of the Senior Bonds, the Subordinate Bonds, Senior Financing Agreement, Subordinate Financing Agreement, Senior Bond Purchase Agreement, Subordinate Bond Purchase Agreement, the Assignment, the Senior Indenture, the Subordinate Indenture or the assignment of the Note (the "Issuer Documents") or questioning the due organization of the City, or the powers or authority of the City to issue the Senior Bonds or Subordinate Bonds and undertake the transactions contemplated hereby.

(b) The execution, delivery and performance of the City's obligations under the Senior Bonds and Subordinate Bonds (collectively, the "Bonds") and Issuer Documents do not and will not violate any order against the City of any court or other agency of government, or any indenture, agreement or other instrument to which the City is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(c) The Bonds shall not be payable from or a charge upon any funds of the City other than amounts payable pursuant to the Senior Financing Agreement and Subordinate Financing Agreement and moneys in the funds and accounts held by the Trustee which are pledged to the payment thereof; the City shall not be subject to any liability thereon; no owners of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay any of the Bonds or the interest thereon or to enforce payment thereof against any property of the City; the Bonds shall not constitute a general or moral obligation of the City or a charge, lien or encumbrance, legal or equitable, upon any property of the City (other than the interest of the City in the Loan Repayments to be made by the Company under the Senior Financing Agreement and Subordinate Financing Agreement); and each Bond issued under the Senior Indenture and

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Subordinate Indenture shall recite that such Bonds, including interest thereon, shall not constitute or give rise to a charge against the general credit or taxing powers of the City.

4. Approval and Execution of Documents. The Bonds and Issuer Documents are authorized to be executed in the name and on behalf of the City by the Mayor and Clerk, or executed or attested by other officers of the City, in their discretion and at such time, if any, as such officers may deem appropriate, in substantially the form on file, but with such changes therein as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof. The Bonds and the Issuer Documents, and the authorization herein for the City to execute and deliver the same, shall also be subject to the review and comment by Briggs and Morgan, acting in its capacity as Issuer's Counsel to the City with respect to the Bonds.

5. Approval, Execution and Delivery of Bonds. The issuance of the Bonds is authorized, in an aggregate principal amount of not to exceed \$3,500,000 for the Senior Bonds and \$800,000 for the Subordinate Bonds, in the forms and upon the respective terms set forth in the Senior Indenture and Subordinate Indenture respectively, which terms are for this purpose incorporated in this Resolution and made a part hereof; provided, however, that the principal amount of and the maturities of the Bonds, the interest rate on the Subordinate Bonds, and any provisions for the optional or mandatory redemption thereof shall all be as set forth in the final form of the Senior Indenture and Subordinate Indenture to be approved, executed and delivered by the officers of the City authorized to do so by the provisions of this Resolution, which approval shall be conclusively evidenced by such execution and delivery, provided that the final maturity of the Senior Bonds shall be December 15, 2033, the final maturity of the Subordinate Bonds shall be December 15, 2034, and the maximum rate of interest on the Subordinate Bonds shall be eight and fifty hundredths percent (8.50%) per annum. The Mayor, Clerk and other City officers are authorized, in their discretion and at such time, if any, as they may deem appropriate, to execute the Bonds as prescribed in the Senior Indenture and Subordinate Indenture, together with a certified copy of this Resolution and such other City documents as may be reasonably required.

6. Senior Bonds Official Statement and Subordinate Bonds Official Statement. The City hereby consents to the circulation by the Underwriter of the Senior Bonds Official Statement and Subordinate Bonds Official Statement in offering the Senior Bonds and Subordinate Bonds respectively for sale; provided, however, that the City has not participated or been requested to participate in the preparation of either the Senior Bonds Official Statement or the Subordinate Bonds Official Statement nor has it independently verified the information in the Senior Bonds Official Statement or Subordinate Bonds Official Statement, and the City assumes no responsibility for, and makes no representations or warranties as to, the accuracy, sufficiency or completeness of such information.

7. Certificates, etc. The Mayor, Clerk and other officers of the City may furnish to bond counsel and the purchaser of the Bonds, when issued, certified copies of all proceedings and records of the City relating to the Bonds, and such other affidavits and certificates as may be required to show the facts appearing from the books and records of the City in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and

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affidavits, including any heretofore furnished, shall constitute representations of the City as to the truth of all statements contained therein.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS 1ST DAY OF DECEMBER, 2003.

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\_\_\_\_\_  
PRESIDENT OF SAID  
COMMON COUNCIL

ATTEST:

\_\_\_\_\_  
CITY CLERK

Approved this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
MAYOR OF SAID CITY

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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF OLMSTED    )

I, the undersigned, being the duly qualified and acting City Clerk of the City of Rochester, Minnesota (the "City"), do hereby certify that attached hereto is a compared, true and correct copy of a resolution giving final approval to an issuance of revenue bonds by the City on behalf of Eastridge Associates, LLC, duly adopted by the Common Council of the City on December 1, 2003, at a regular meeting thereof duly called and held, as on file and of record in my office, which resolution has not been amended, modified or rescinded since the date thereof, and is in full force and effect as of the date hereof, and that the attached Extract of Minutes as to the adoption of such resolution is a true and accurate account of the proceedings taken in passage thereof.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
City Clerk